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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re Marriage of EULOGIO MAMARIL  
and PRISCILLA MAMARIL.

B186373

(Los Angeles County  
Super. Ct. No. D082740)

EULOGIO MAMARIL,

Respondent,

v.

PRISCILLA MAMARIL,

Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Reva G. Goetz, Commissioner (pursuant to Cal. Const., art. VI, § 21). Reversed in part and remanded.

Law Offices of Ramaker & Ramaker, Dolores J. Ramaker for Appellant.

Lascher & Lascher, Alfred Vargas for Respondent.

## INTRODUCTION

A judgment dissolving the marriage of appellant Priscilla Mamaril (Priscilla) and respondent Eulogio Mamaril (Eulogio)<sup>1</sup> was entered in 1984. A child support order was entered directing Eulogio to pay certain sums to Priscilla for the support of Priscilla's and his children – Ronaldo, Eugene, and Ervin. Over the ensuing years, Eulogio failed to pay Priscilla all of the child support to which she was entitled. In 2005, Eulogio filed an order to show cause seeking a determination of the amount of child support he was in arrears and requesting a payment plan. After a hearing on the order to show cause, the trial court found, among other things, that Eulogio had fully paid child support for the years 1995, 1996, 1997, and 1998, although the payments had been made directly to the children and not to Priscilla, and that Priscilla was estopped from challenging the manner in which Eulogio paid child support during those years because she participated in the procedure without objection. The trial court ordered Priscilla and Eulogio to bear her and his own attorney fees. Priscilla appeals both as to the trial court's determination that Eulogio fully paid child support for the years 1995, 1996, 1997, and 1998, and its denial of her attorney fees. We reverse those parts of the trial court's order and remand this case to the trial court for a recalculation of Eulogio's child support obligation for 1995, 1996, 1997, and 1998, and for a reconsideration of Priscilla's request for attorney fees. The order is otherwise affirmed.

## BACKGROUND

By order dated November 5, 1987, the trial court ordered Eulogio to pay Priscilla \$800 a month as child support consisting of \$266.66 for Ronaldo, \$266.67 for Eugene, and \$266.66 for Ervin. In 1994, Ronaldo turned 18, and Eulogio applied for a reduction in his child support obligation. The trial court reduced Eulogio's child support obligation

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“As is customary in family law cases, we refer to the parties by their first names for purposes of clarity and not out of disrespect.” (*Kuehn v. Kuehn* (2000) 85 Cal.App.4th 824, 828, fn. 2.)

to \$720 a month beginning March 15, 2004, consisting of \$270 for Eugene and \$450 for Ervin.

In 1995, Eulogio began paying his monthly child support directly to Eugene and Ervin and not to Priscilla as ordered by the trial court. At the order to show cause hearing, Eulogio testified that although his monthly child support obligation was \$720, he only gave his sons two \$300 checks each month<sup>2</sup> – one \$300 check made payable to Eugene and one to Ervin. Eulogio explained that he began paying the children directly “because the child complain that the money that child support that I’m giving them, they don’t being spent to them. Since they’re in a critical age – 13, 14, that age – and I have to go to other state, I told them that I cannot bring this one in court, you know, about your complaints. So what will I do? I’ll give you allowance, but I want you to improve your grades because, if you go to college, my income is not decent to support you in college. What I want you to do is I’ll give you the check with you, but you have to give the portion to your mother. And I’ll give you allowance to improve your grades. But I want to see to it that you show your grades because I cannot supervise you in your school. I see you only once every other week. I want to improve your grades so you can qualify for a grant or scholarship in college.” Eulogio told his sons to “get \$30, \$35 for their allowance.”

Priscilla usually accompanied Eugene and Ervin to the bank to cash the child support checks they received from their father. After cashing the checks, Eugene and Ervin kept \$50 which they split and gave the balance – \$250 – to their mother.<sup>3</sup> Priscilla never told her sons, “I want the full amount.” Although Eulogio had written “child support” on the checks, Priscilla explained, the checks were in her sons’ names so that she had no control. Priscilla testified that she did not speak with Eulogio about his

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<sup>2</sup> Eulogio admitted that the checks sometimes were less than \$300.

<sup>3</sup> Eugene testified both that he had given his mother \$250 “every time” he received a check and that he had given his mother the entire proceeds of each check he received in 1995 and only started deducting \$50 for himself and his brother in 1996.

paying the child support directly to their children. She explained that Eulogio “is an intelligent man. And he know I am the one that is raising the children. He’s supposed to – . . . I didn’t do anything. I’m sorry but I – besides I was so tired, and I was so busy. It just depending on what they give.” Later, Priscilla appeared to testify that she did not contact Eulogio concerning the child support payments because she feared he would verbally abuse her. Priscilla testified that she did not consider sending Eulogio a letter.

Eulogio testified that each time he gave a check to his sons, he asked them if their mother had any complaints. The children never reported a complaint from their mother and she never complained to Eulogio. Eulogio tried to discuss with Priscilla paying the child support directly to their children, but he was unable to. Whenever he tried to talk to her, she answered, “My lawyer will take care of you.”

Eugene turned 18 in September 1998. After turning 18, Eugene deposited the checks from his father into a savings account and did not give any portion to his mother. Nevertheless, Priscilla credited those payments against Eulogio’s child support obligation.

In its September 1, 2005, minute order following the hearing on Eulogio’s order to show cause, the trial court found, with respect to 1995, 1996, and 1997, that “In accordance with the testimony of Eugene and Ervin Mamaril . . . [Eulogio] paid all child support for 1995[, 1996, and 1997]. While it is true that he paid the support to the children, both parties made it clear that they could not and did not communicate with one another. However, both sons testified that they received the checks from their father and either showed or gave the checks to their mother, [Priscilla], who assisted them in cashing and/or depositing them and was aware of that process for [Eulogio] paying his child support obligation. [Priscilla] is estopped from now disagreeing with this procedure since she participated in it without expressing to anyone that she did not agree with this method of payment.”<sup>4</sup>

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<sup>4</sup> The language, but not the substance, of the 1997 finding differs slightly from the 1995 and 1996 findings.

As to 1998, the trial court found that “In accordance with the testimony of Eugene and Ervin Mamaril . . . [Eulogio] paid all child support for 1998. At some undefined point in time, Ervin told [Eulogio] he did not want to continue to receive checks from [Eulogio]. At that point, [Eulogio] sent the entire child support amount to Eugene. Eugene testified that he kept the money. However, [Priscilla] is estopped from now disagreeing with this procedure since she participated in it without expressing to anyone that she did not agree with this method of payment either earlier or even at the time Eugene started to receive those payments on behalf of Ervin.”

The trial court further found that Eulogio “exacerbated the attorney fees by failing to pay child support in accordance with the existing orders” and Priscilla “exacerbated the attorney fees by failing to keep accurate records, failing to inform [Eulogio] of her failure to acknowledge [Eulogio]’s child support payments that were made directly to the parties’ children, and failing to give [Eulogio] credit for payments made even after he provided proof of making those payments.” Among other orders, the trial court ordered counsel for Eulogio to “recalculate child support arrears in accordance with the findings as stated above,” and ordered that each party was to bear her or his own attorney fees and costs.

On September 29, 2005, Priscilla filed her notice of appeal. On November 1, 2005, the trial court signed and filed the “Recalculation of Child Support Arrears in Accordance With Court’s Findings and Orders Dated 9/1/2005” (Recalculation) prepared by Eulogio’s counsel. An Arrearage Report attached to the Recalculation reflects that Eulogio made every required \$720 payment for the years 1995, 1996, 1997, and 1998.<sup>5</sup>

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For the months of October, November, and December 1998, the Arrearage Report reflects that Eulogio paid \$440. This apparently reflects a downward modification in Eulogio’s monthly support obligation after Eugene turned 18 in September 1998.

## **DISCUSSION**

### **I. Eulogio's Contention That We Are Without Jurisdiction Because Priscilla Did Not Appeal From a Final Order**

Eulogio contends that the trial court's September 1, 2005, order entitled "Ruling on Matter Submitted" "dictated" that his attorney was to prepare a "final order." The part of the trial court's September 1, 2005, order on which Eulogio relies provides, "Counsel for [Eulogio] is to recalculate child support arrears in accordance with the findings as stated above." Eulogio filed the Recalculation on November 1, 2005, just over one month after Priscilla filed her notice of appeal on September 29, 2005. Because Priscilla did not file a new notice of appeal from the Recalculation, Eulogio contends, Priscilla has failed to appeal from the final order.

"The reviewing court may treat a notice of appeal filed after the superior court has announced its intended ruling, but before it has rendered a judgment, as filed immediately after entry of judgment." (Cal. Rules of Court, rule 2(e)(2)<sup>6</sup>, renumbered rule 8.104(e)(2) effective January 1, 2007.) We consider the trial court's Ruling on Matter Submitted to be the trial court's intended ruling and deem the premature notice of appeal as being filed immediately after the Recalculation was filed.

### **II. Eulogio's Contention That Priscilla Failed to Provide an Adequate Record for Appellate Review**

Citing *Gee v. American Realty & Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1416, Eulogio contends that Priscilla has failed to provide an adequate record for appellate review. We disagree.

Those documents that Eulogio contends are missing from the record and necessary for appellate review are the trial court's September 1, 2005, order and the register of actions. The trial court's September 1, 2005, order is attached to Priscilla's opening

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<sup>6</sup> All citations to rules are to the California Rules of Court unless otherwise noted.

brief. The register of actions, if any, is a normal part of the record on appeal (Rule 5(b), renumbered rule 8.120(b)(1)(F) effective January 1, 2007)) and Priscilla was not required to designate it as part of the record.<sup>7</sup> Moreover, Eulogio does not explain how the absence of the register of actions makes the record on appeal inadequate in this particular case.

Priscilla appeals the trial court's determination that Eulogio fully paid child support for the years 1995, 1996, 1997, and 1998. Full child support would have been a payment of \$720 a month. Eulogio, Priscilla, Eugene, and Ervin variously testified at the hearing on Eulogio's order to show cause about whether Eulogio paid Priscilla \$720 a month, about Eugene's and Ervin's deduction of \$50 per child support check for their "allowance," and about Priscilla's conduct that the trial court relied on to find that Priscilla was estopped from challenging Eulogio's practice of paying child support directly to Eugene and Ervin. Priscilla's appellate record includes, inter alia, a copy of the reporter's transcript for the hearing on the order to show cause. Thus, the record is adequate for appellate review.

Priscilla also appeals the trial court's denial of her attorney fees. Attached to Priscilla's opening brief are her financial statement and Eulogio's income and expense declaration and the declarations by her attorney and Eulogio's attorney in support of the parties' respective claims for attorney fees. The clerk's transcript contains Priscilla's attorney's response to Eulogio's attorney's declaration in support of Eulogio's claim for attorney fees. Again, this is an adequate record for appellate review. Eulogio does not identify any document that he contends is necessary for review of this claim and that is missing from the record on appeal.

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Moreover, a purported copy of the register of actions, apparently current as of about August 8, 2005, is attached as an exhibit to a document in the Clerk's Transcript entitled "Response of Respondent's Attorney, Dolores J. Ramaker, to Petitioner's Attorney Ethelene F. Salas' Declaration For An Award Of Attorney's Fees."

### **III. The Trial Court's Finding That Eulogio Paid All the Child Support Due in 1995, 1996, 1997, and 1998 Is Not Supported by Substantial Evidence**

Priscilla contends that the trial court erred in finding that Eulogio paid all the child support due in 1995, 1996, 1997, and 1998. We agree.

The factual issues as to whether Eulogio paid all the child support he owed or whether arrearages exist is reviewed for substantial evidence. (See *People v. Schmeck* (2005) 37 Cal.4th 240, 294 [juror misconduct]; *People v. Ramos* (2004) 34 Cal.4th 494, 520 [Fourth Amendment]; *Gober v. Ralphs Grocery Co.* (2006) 137 Cal.App.4th 204, 216 [punitive damages]; *Goebel v. City of Santa Barbara* (2001) 92 Cal.App.4th 549, 556 [question of legal cause].)

By order dated June 28, 1994, the trial court ordered Eulogio to pay Priscilla child support in the amount of \$720 a month beginning March 15, 1994. It appears that this order remained in full force and effect until January 19, 1999, when the trial court ordered Eulogio to pay child support in the amount of \$440 for Ervin. This modification apparently resulted from Eugene turning 18 in September 1998 and, based on the Arrearage Report, apparently was effective as of October 1998.

In his testimony at the order to show cause hearing, Eulogio testified that his monthly child support obligation was \$720 and that he paid Eugene and Ervin two \$300 checks each month – a total of \$600. He testified that, sometimes, the checks were less than \$300. Eugene testified that he and Ervin received \$300 checks, that they kept \$50 from each check, and that they gave their mother the balance of \$250.<sup>8</sup> Priscilla testified that her sons gave her \$250 out of each check.<sup>9</sup> Notwithstanding this undisputed testimony from all of the witnesses at the order to show cause hearing that Eulogio did not pay Priscilla the court-ordered \$720 in monthly child support and, instead, paid at

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<sup>8</sup> Eugene gave conflicting testimony on this point. (See footnote 3, *ante.*)

<sup>9</sup> Priscilla does not contend that the trial court erred in crediting Eulogio with the \$250 payments she actually received.

most \$600 a month, the trial court, in its Ruling on Matter Submitted, found “[i]n accordance with the testimony of Eugene and Ervin Mamaril . . . [Eulogio] paid all child support for 1995[, 1996, 1997, and 1998].” No evidence, let alone substantial evidence, supports this finding.

Implicit in the trial court’s finding that Eulogio paid all child support for the years 1995, 1996, 1997, and 1998 is the finding that Eulogio should receive credit against his child support obligation for the amounts Eugene and Ervin deducted from the child support checks as allowance. Such a finding is error. The trial court’s June 28, 1994, child support order ordered Eulogio to pay Priscilla child support in the amount of \$720 a month beginning March 15, 2004. Eulogio admitted that he only paid \$600 a month. Moreover, the order did not grant Eulogio the discretion to direct how any part of the \$720 was to be used. Although an allowance for Eugene and Ervin might be consistent with the goals of child support, the decision to use part of Eulogio’s monthly child support for an allowance was Priscilla’s decision to make, not Eulogio’s. Thus, the amounts Eulogio allocated for the allowance should not have been credited as against the support payment.

In Priscilla’s claim that the trial court erred in crediting Eulogio for the allowance he gave to Eugene and Ervin and that Eulogio should be credited only with the amounts that Priscilla actually received, Priscilla also contends that “Eulogio should not receive credit for any payments he made to Eugene in 2001 since Eugene kept all of the funds he was paid. . . . However, Priscilla did credit Eulogio with payments she knew Eugene had received and Eulogio should be thankful that she gave him any credit at all since she never received the payments. Eulogio should not be credited with any payments greater than those Priscilla voluntarily credited him with in 2001 and 2002. The evidence is clear, Priscilla never received the funds from Eugene. Therefore, Eulogio should not be given any credit for payments to Eugene.”<sup>10</sup> Priscilla’s argument on this point is

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<sup>10</sup> The trial court credited Eulogio with 25 payments of \$220 as child support in 2001.

internally inconsistent. Initially she states that she credited Eulogio for payments that Eugene received; then she argues that Eulogio should not be credited with any payments greater than those she credited him with; she concludes that Eulogio should not be credited for payments to Eugene. Priscilla has forfeited this issue on appeal by her failure to make a coherent argument. (*Berger v. California Ins. Guarantee Assn.* (2005) 128 Cal.App.4th 989, 1007.)

Because substantial evidence does not support the trial court's finding that Eulogio paid all child support for 1995, 1996, 1997, and 1998, and the trial court erred in crediting against Eulogio's child support obligation the allowance that Eugene and Ervin took from the child support checks, we reverse that part of the trial court's order. We remand this to the trial court for a recalculation of Eulogio's child support arrearages for those years.

#### **IV. Priscilla Is Not Estopped From Challenging the Manner in Which Eulogio Paid Child Support in 1995, 1996, 1997, and 1998**

The trial court found that Priscilla was estopped from challenging Eulogio's payment of child support directly to Eugene and Ervin because she participated in the procedure by assisting her children in cashing or depositing the checks without complaint. Although not entirely clear, it appears that the trial court's estoppel finding barred Priscilla from claiming as an arrearage the difference between the \$720 Eulogio was ordered to pay as child support and the amount he actually paid, and from claiming that the allowance Eugene and Ervin took from the monthly child support checks should not be credited against Eulogio's child support obligation. Priscilla contends the trial court's finding was error.

A "trial court has discretion to determine the appropriate means of enforcing a judgment for child support, and in exercising that discretion, the trial court can, and should take the equities of the situation into account. (*Keith G. v. Suzanne H.* [(1998)] 62 Cal.App.4th 853, 861.) Thus, California recognizes the equitable defenses of both waiver and estoppel in appropriate cases. (See, e.g., *In re Marriage of Damico* (1994) 7 Cal.4th

673 [29 Cal.Rptr.2d 787, 872 P.2d 126] (*Damico*); *State of Washington ex rel. Burton v. Leyser* (1987) 196 Cal.App.3d 451 [241 Cal.Rptr. 812]; *Graham v. Graham* (1959) 174 Cal.App.2d 678 [345 P.2d 316].)” (*In re Marriage of Dancy* (2000) 82 Cal.App.4th 1142, 1154, superseded by statute on other grounds as stated in *In re Marriage of Fellows* (2006) 39 Cal.4th 179, 185 & fn. 6; *In re Marriage of Comer* (1996) 14 Cal.4th 504, 514-515, [recognizing the application of the equitable defense of estoppel to claims for child support arrearages].)

“‘Whenever a party has, by his own statement or conduct, intentionally and deliberately led another to believe a particular thing true and to act upon such belief, he is not, in any litigation arising out of such statement or conduct, permitted to contradict it.’ (Evid. Code, § 623.) The party seeking to establish an estoppel must show by clear and convincing evidence (*In re Marriage of Fell* (1997) 55 Cal.App.4th 1058, 1065 [64 Cal.Rptr.2d 522]) that ‘(1) the party to be estopped knew the facts; (2) the other party was ignorant of the true facts; (3) the party intended his conduct would be acted upon, or acted in a manner that the party asserting the estoppel had a right to believe it so intended; and (4) the other party relied upon the conduct to his injury. Where one of the elements is missing, there can be no estoppel. [Citations.] The doctrine acts defensively only. It operates to prevent one from taking unfair advantage of another but not to give an unfair advantage to one seeking to invoke the doctrine. [Citation.]’ (*In re Marriage of Thompson* (1996) 41 Cal.App.4th 1049, 1061 [48 Cal.Rptr.2d 882].)” (*In re Marriage of Brinkman* (2003) 111 Cal.App.4th 1281, 1289-1290.)

All of the elements of estoppel were not present in this case. Eulogio was not ignorant of the true facts. (*In re Marriage of Brinkman*, *supra*, 111 Cal.App.4th at p. 1290.) He did not mistakenly pay Priscilla less than the court-ordered monthly child support obligation of \$720 or mistakenly believe that he was permitted to pay Eugene and Ervin an allowance out of that support obligation. Instead, Eulogio knew that he was under a court order to pay Priscilla \$720 in child support each month. He also knew that if the circumstances were such that he was entitled to pay a lesser amount of child support he could go to court to seek a reduction. Eulogio simply ignored the trial court’s

child support order and paid an amount he determined he should pay. Likewise, Eulogio knew he could present to the trial court Eugene's and Ervin's complaints about the manner in which Priscilla was spending Eulogio's child support payments. Instead, Eulogio disregarded the trial court's order and paid his monthly child support obligation directly to Eugene and Ervin, instructing them to take an allowance from the child support checks. Because all the elements of estoppel were not present, the trial court's estoppel finding was error. (*Ibid.*) Moreover, simply considering the equities, allowing Eulogio to use the doctrine of estoppel to prevent Priscilla from enforcing a valid court order that Eulogio intentionally violated in a number of ways would not be equitable. (*Id.* at pp. 1289-1290.)

## **V. Priscilla's Claim for Attorney Fees**

Family Code section 2030<sup>11</sup> authorizes the trial court to award attorney fees in proceedings involving child support. The purpose of an award under Family Code section 2030 "is to provide one of the parties, if necessary, with an amount adequate to properly litigate the controversy." (*In re Marriage of Sullivan* (1984) 37 Cal.3d 762, 768; *In re Marriage of Duncan* (2001) 90 Cal.App.4th 617, 629.) "An award of attorney fees under Family Code section 2030 is reviewed for abuse of discretion, and we therefore must affirm unless no judge reasonably could make the order. [Citation.]" (*In re Marriage of Rosen* (2002) 105 Cal.App.4th 808, 829.)

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<sup>11</sup> Family Code section 2030, subdivision (a)(1) provides:

"In a proceeding for dissolution of marriage, nullity of marriage, or legal separation of the parties, and in any proceeding subsequent to entry of a related judgment, the court shall ensure that each party has access to legal representation to preserve each party's rights by ordering, if necessary based on the income and needs assessments, one party, except a governmental entity, to pay to the other party, or to the other party's attorney, whatever amount is reasonably necessary for attorney's fees and for the cost of maintaining or defending the proceeding during the pendency of the proceeding."

Priscilla requested \$5,737.50 in attorney fees. Priscilla's monthly income was \$2,513.33; she claimed monthly expenses for mortgage interest and health insurance costs of \$861.08. Eulogio claimed average monthly income of \$5,564.95. Eulogio's wife had a monthly income of \$2,905. Eulogio claimed monthly expenses of \$4,956 for a variety of household expenses.

In ordering that the parties bear their own attorney fees, the trial court found that Eulogio "exacerbated the attorney fees by failing to pay child support in accordance with the existing orders" and Priscilla "exacerbated the attorney fees by failing to keep accurate records, failing to inform [Eulogio] of her failure to acknowledge [Eulogio]'s child support payments that were made directly to the parties' children, and failing to give [Eulogio] credit for payments made even after he provided proof of making those payments." Notwithstanding the trial court's findings, the record shows that Priscilla credited Eulogio with every \$250 payment she received and kept records of each payment. Eulogio's attorney stipulated that Priscilla kept records, although she would not stipulate to the accuracy of those records.

In light of our holdings that Eulogio failed to fully pay child support for 1995, 1996, 1997, and 1998; and that Priscilla was not estopped from claiming as an arrearage the difference between the \$720 Eulogio was ordered to pay as child support and the amount he actually paid, and from claiming that the allowance Eugene and Ervin took from the monthly child support checks should not be credited against Eulogio's child support obligation; we remand this case to the trial court to reconsider Priscilla's request for attorney fees.

### **DISPOSITION**

The trial court's order is reversed as to the calculation of child support arrearages for the years 1995, 1996, 1997, and 1998, and as to the denial of Priscilla's attorney fees. We remand this case to the trial court for a recalculation of the child support that Eulogio owes Priscilla for 1995, 1996, 1997, and 1998, and to reconsider Priscilla's request for attorney fees. The trial court's order is otherwise affirmed. Priscilla is awarded her costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

MOSK, J.

We concur:

TURNER, P. J.

KRIEGLER, J.